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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIE REYNOLDS,

Defendant and Appellant.

C086778

(Super. Ct. No. 17FE016438)

Defendant Willie Reynolds appeals from a conviction of inflicting corporal injury resulting in a traumatic condition upon his cohabitant. Defendant contends the trial court prejudicially erred in instructing the jury with CALCRIM No. 850 regarding expert testimony on intimate partner battering because it allowed the jury to use the expert's testimony to find that defendant committed the charged crime and prior uncharged acts. We will affirm the judgment.

I. BACKGROUND

Defendant had an intimate relationship with the victim. A witness saw defendant arguing with the victim near a restroom in a park. He saw the victim go into the restroom and defendant follow her. After a couple of minutes, defendant emerged from the restroom, and two minutes later, the victim emerged with blood on her face. The victim initially told several people that defendant hit her but she recanted at trial and claimed she was injured after a fall in the bathroom during a seizure. Right after the incident, a witness saw the victim bleeding and assisted her. The victim said that her boyfriend hit her in the head during an argument.

Later, while the victim was treated in a hospital for a forehead laceration and fractures of the bones around her eye, she told a nurse and a treating physician that her boyfriend had hit her in the face. The victim also told a social worker at the hospital that her boyfriend had hit her, and she was afraid he would kill her if she talked to the police. In a recorded interview, the victim told an investigating officer that defendant came into the bathroom and hit her and that she was afraid he would kill her.

Subsequently, in a recorded telephone call between the victim and defendant, the victim said the police were trying to talk to her and she was “not trying to do all that.” Defendant replied, “No, no, no no. No, no, no, no, no. Not that at all.” The victim clarified that she was not trying to talk to the police, but they were trying to talk to her, and defendant cut her off, repeating “None at all” and “Not at all.” Later in the call when discussing the charges, defendant said, “we just had a fight and that was that.” Neither party mentioned the victim having a fall or a seizure.

Of particular significance to this appeal, the prosecution called David Cropp, a domestic violence crisis counselor and former detective in the family abuse unit of the police department, to testify as an expert on domestic violence and intimate partner battering. Cropp testified that domestic violence is a pattern of abuse or coercion designed to control and intimidate a partner. He explained that generally, in domestic

violence situations, there is a “cycle of violence” with three phases: (1) tension building, (2) an acute episode, and (3) a honeymoon phase or period of contrition. He testified that it is common for domestic violence victims to minimize the abuse and refuse to cooperate with the prosecution or law enforcement. He explained, for example, that victims of intimate partner battering will often recant and say that the violence did not happen.

The prosecution also presented evidence of defendant’s prior uncharged crime of domestic violence against the victim, and it was stipulated that defendant was convicted in three additional cases involving domestic violence against the victim and two prior victims.

Following a jury trial, defendant was convicted of inflicting corporal injury resulting in a traumatic condition upon his cohabitant (Pen. Code, § 273.5, subd. (a)).¹ In a bifurcated proceeding, the trial court found true the allegations that defendant had previously been convicted of a serious felony (§§ 667, subds. (b)-(i), 1170.12) and had served a prior prison term (§ 667.5, subd. (b)). The court sentenced defendant to an aggregate term of nine years.

II. DISCUSSION

Defendant contends that the trial court erred by instructing the jury with CALCRIM No. 850 on two bases: (1) allowing the jury to use expert testimony to evaluate the victim’s “believability” was tantamount to allowing the jury to use the expert testimony as evidence of defendant’s guilt; and (2) the language did not preclude the jury from using the expert testimony to conclude that defendant committed the uncharged crimes and was thus disposed to commit the charged offense. We disagree.

“ ‘[T]he correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction.’ [Citations.]” (*People v. Carrington* (2009) 47 Cal.4th 145, 192.) “The

¹ Undesignated statutory references are to the Penal Code.

meaning of instructions is no longer determined under a strict test of whether a ‘reasonable juror’ *could* have understood the charge as the defendant asserts, but rather under the more tolerant test of whether there is a ‘reasonable likelihood’ that the jury misconstrued or misapplied the law in light of the instructions given, the entire record of trial, and the arguments of counsel.” (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 276.)

The trial court instructed the jury with CALCRIM No. 850 in accordance with Evidence Code section 1107, subdivision (a), which provides that expert testimony on “intimate partner battering and its effects” is admissible in criminal actions. The court instructed the jury as follows: “You’ve heard testimony from David Cropp regarding the effect of intimate partner battering. David Cropp’s testimony about intimate partner battering is not evidence that the defendant committed any of the crimes charged against him. You may consider this evidence only in deciding whether or not [the victim’s] conduct was not inconsistent with the conduct of someone who has been abused and in evaluating the believability of her testimony.” Defense counsel did not object.

Defendant contends that because, “as in many domestic violence cases, [defendant’s] guilt or innocence turned on the complaining witness’s believability,” allowing the jury to use Cropp’s testimony to evaluate whether the victim’s testimony was believable is “indistinguishable from permitting [the jury] to use it as evidence that [defendant] committed the charged crime.” The contention lacks merit. It is well settled that expert testimony relating to intimate partner battering is admissible and relevant to a jury’s evaluation of the reasonableness of the victim’s actions and to her credibility as a witness. (*People v. Brown* (2004) 33 Cal.4th 892, 903 (*Brown*).) CALCRIM No. 850 properly directed the jury to consider Cropp’s testimony for these limited purposes. It did not suggest the victim was telling the truth in her earlier reports or that defendant committed the charged crime. To the contrary, the instruction expressly prohibited the jury from using Cropp’s testimony for that purpose. The prohibition against other uses

was reinforced by CALCRIM No. 303, which advised the jury that “certain evidence was admitted for a limited purpose” and that the jury could “consider that evidence only for that purpose and for no other.”

Defendant relies on *People v. Sanchez* (2016) 63 Cal.4th 665. There, the jury was instructed that it needed to “ ‘decide whether information on which the expert relied was true and accurate,’ ” but was also instructed the expert’s testimony concerning the defendant’s statements and police reports should not be considered “ ‘proof that the information contained in those statements was true.’ ” (*Id.* at p. 684.) The court reasoned that the jury could not follow these conflicting instructions because it could not “decide whether the information relied on by the expert ‘was true and accurate’ without considering whether the specific evidence identified by the instruction, and upon which the expert based his opinion, was also true.” (*Ibid.*)

Without agreeing the instruction in this case was inconsistent, as were the instructions in *Sanchez*, we are nevertheless bound by *Brown, supra*, 33 Cal.4th at pp. 903, 906-907, where our high court held that a jury may consider an expert’s testimony on intimate partner battering in evaluating the victim’s credibility. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Moreover, here, Cropp testified about general patterns of behavior among domestic violence victims and explained why such victims often recant their initial reports, but did not directly opine on the victim’s credibility. The jury was instructed, “You alone must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience.” Thus, consistent with our high court’s reasoning in *Brown*, CALCRIM No. 850 allowed the jury to consider the expert’s general testimony about intimate partner battering in evaluating the victim’s credibility, consistent with Evidence Code section 1107, but it did not allow the jury to adopt the expert’s assessment in lieu of performing its own evaluation of her credibility. Her credibility did not turn on the expert’s testimony alone. Accordingly, we reject defendant’s argument.

Defendant's secondary argument is equally unavailing. He argues that "CALCRIM No. 850's limiting language told the jury that David Cropp's testimony about intimate partner battering was 'not evidence that the defendant committed any of the crimes *charged against him*' " but "did not prohibit the jurors from using the expert's testimony as evidence that [defendant] committed *uncharged* crimes of domestic violence against [the victim]." Defendant misstates the instruction. In the next paragraph, the instruction clarifies that the evidence can be used for one purpose alone: "You may consider this evidence only in deciding whether or not [the victim's] conduct was not inconsistent with the conduct of someone who has been abused, and in evaluating the believability of her testimony." The court's instruction in CALCRIM No. 303 reinforced that "certain evidence was admitted for a limited purpose" and that the jury could "consider that evidence only for that purpose and for no other." We presume that jurors understand and follow instructions. (*People v. Hernandez* (2011) 200 Cal.App.4th 953, 969.) We cannot conclude that the jurors would have reasonably read these instructions to mean that they could consider the expert's general testimony on domestic violence dynamics for the purpose of finding that defendant committed the uncharged acts of domestic violence. It is not likely that the jury misconstrued or misapplied the law on this basis. There was no instructional error.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

MURRAY, Acting P. J.

/S/

HOCH, J.